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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ALEXIOS KAFATOS, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

UBER, TECHNOLOGIES INC.,

) Case No.
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CLASS ACTION
COMPLAINT FOR VIOLATIONS OF:
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)
1. NEGLIGENT VIOLATIONS OF
)
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C.
§227 ET SEQ.]
)
2. WILLFUL VIOLATIONS OF
)
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C.
§227 ET SEQ.]
)
)

DEMAND FOR JURY TRIAL
)

INTRODUCTION

1. ALEXIOS KAFATOS (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of UBER, TECHNOLOGIES INC. (“Defendant”), in negligently and knowingly contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading

1 Plaintiff's privacy. Plaintiff alleges as follows upon personal knowledge as
2 to himself and his own acts and experiences, and, as to all other matters,
3 upon information and belief, including investigation conducted by his
4 attorneys.

5 **JURISDICTION AND VENUE**

6 2. Jurisdiction is proper under 28 U.S.C. § 1332 because Plaintiff seeks up to
7 \$1,500 in damages for each call in violation of the TCPA, which, when
8 aggregated among a proposed class number in the tens of thousands,
9 exceeds the \$5,000,000 threshold for federal court jurisdiction. Further,
10 Plaintiff alleges a national class, which will result in at least one class
11 member belonging to a different state than that of Defendant, providing
12 jurisdiction under 28 U.S.C. Section 1332. Therefore, both elements of
13 diversity jurisdiction under the Class Action Fairness Act of 2005
14 ("CAFA") are present, and this Court has jurisdiction.
15

16 3. Venue is proper in the United States District Court for the Northern District
17 of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because
18 Defendant is subject to personal jurisdiction in the County of San Francisco,
19 State of California.

20 **PARTIES**

21 4. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
22 the State of California. Plaintiff is, and at all times mentioned herein was, a
23 "person" as defined by 47 U.S.C. § 153 (10).
24

5. Plaintiff is informed and believes, and thereon alleges, that Defendant is,
25 and at all times mentioned herein was, a corporation whose primary
26 corporate address is in San Francisco, California. Defendant, is and at all
27 times mentioned herein was, a corporation and is a "person," as defined by
28 47 U.S.C. § 153 (10). Defendant provides transportation to tens of

1 thousands of consumer nationwide. Plaintiff alleges that at all times
2 relevant herein Defendant conducted business in the State of California and
3 in the County of San Francisco, and within this judicial district.

4 **FACTUAL ALLEGATIONS**

5 6. At all times relevant, Plaintiff was a citizen of the State of California.
7 Plaintiff is, and at all times mentioned herein was, a “person” as defined by
8 47 U.S.C. § 153 (10).

9 7. Defendant is, and at all times mentioned herein was, a corporation and a
10 “person,” as defined by 47 U.S.C. § 153 (10).

11 8. At all times relevant Defendant conducted business in the State of
12 California and in the County of San Francisco, within this judicial district.

13 9. On or about July of 2015, Defendant began using Plaintiff’s cellular
14 telephone, ending in number -3062, for the purpose of sending Plaintiff
15 spam advertisements and/or promotional offers, via text message, including
16 a text message sent to and received by Plaintiff on or about August 5, 2015.

17 10. On August 5, 2015, Plaintiff received a text message from Defendant that
18 read:

19
20 Uber: Anaheim is closed tomorrow! Find us in Fountain
21 Valley and Irvine instead for a FREE vehicle inspection and
qualify for \$100 after 10 trips. For info – t.uber.com/lavi

22 11. Defendant was sending text messages with such frequency that Plaintiff had
23 to block Defendant’s text messages.

24 12. Prior to July of 2015 and including August 5, 2015, Plaintiff had never
25 contacted nor conducted any business with Defendant in any fashion,
26 including having never visited any of Defendant’s online websites.

27

1 13. The text message placed to Plaintiff's cellular telephone was placed via an
2 "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. §
3 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

4 14. The telephone number that Defendant, or its agent called was assigned to a
5 cellular telephone service for which Plaintiff incurs a charge for incoming
6 calls pursuant to 47 U.S.C. § 227 (b)(1).

7 15. These telephone calls constituted calls that were not for emergency
8 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

9 16. As of August 5, 2012, Plaintiff did not provide Defendant or its agents with
10 prior express consent to receive unsolicited text messages, pursuant to 47
11 U.S.C. § 227 (b)(1)(A).

12 17. These telephone calls by Defendant, or its agents, violated 47 U.S.C. §
13 227(b)(1).

14

CLASS ACTION ALLEGATIONS

16 18. Plaintiff brings this action on behalf of himself and on behalf of and all
17 others similarly situated (“the Class”).

18 19. Plaintiff represents, and is a member of the Class, consisting of all persons
19 within the United States who received any unsolicited text messages and/or
20 any other unsolicited text messages from Defendant without prior express
21 consent.

22 20. Defendant and its employees or agents are excluded from the Class.
23 Plaintiff does not know the number of members in the Class, but believes
24 the Class members number in the tens of thousands, if not more. Thus, this
25 matter should be certified as a Class action to assist in the expeditious
26 litigation of this matter.

27 21. Plaintiff and members of the Class were harmed by the acts of Defendant in
28 at least the following ways: Defendant, either directly or through its agents,

1 illegally contacted Plaintiff and the Class members via their cellular
2 telephones by using an unsolicited text message, thereby causing Plaintiff
3 and the Class members to incur certain cellular telephone charges or
4 reduced cellular telephone time for which Plaintiff and the Class members
5 previously paid, and invading the privacy of said Plaintiff and the Class
6 members. Plaintiff and the Class members were damaged thereby.
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22. This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of the Class, and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.

23. The joinder of the Class members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the court. The Class can be identified through Defendant's records or Defendant's agents' records.

24. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact to the Class predominate over questions which may affect individual Class members, including the following:

a) Whether, within the four years prior to the filing of this Complaint, Defendant placed any unsolicited text messages (other than a text message made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automatic telephone dialing and/or texting system to any telephone number assigned to a cellular telephone service;

1 b) Whether Plaintiff and the Class members were damaged thereby, and
2 the extent of damages for such violation; and
3 c) Whether Defendant should be enjoined from engaging in such
4 conduct in the future.

5 28. As a person that received at least one unsolicited text message without
6 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical
7 of the Class. Plaintiff will fairly and adequately represent and protect the
8 interests of the Class in that Plaintiff has no interests antagonistic to any
9 member of the Class.

10 29. Plaintiff and the members of the Class have all suffered irreparable harm as
11 a result of the Defendant's unlawful and wrongful conduct. Absent a class
12 action, the Class will continue to face the potential for irreparable harm. In
13 addition, these violations of law will be allowed to proceed without remedy
14 and Defendant will likely continue such illegal conduct. Because of the size
15 of the individual Class member's claims, few, if any, Class members could
16 afford to seek legal redress for the wrongs complained of herein.

17 30. Plaintiff has retained counsel experienced in handling class action claims
18 and claims involving violations of the Telephone Consumer Protection Act.

19 31. A class action is a superior method for the fair and efficient adjudication of
20 this controversy. Class-wide damages are essential to induce Defendant to
21 comply with federal law. The interest of Class members in individually
22 controlling the prosecution of separate claims against Defendant is small
23 because the maximum statutory damages in an individual action for
24 violation of privacy are minimal. Management of these claims is likely to
25 present significantly fewer difficulties than those presented in many class
26 claims.

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32. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

**FIRST CAUSE OF ACTION
NEGIGENT VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT
47 U.S.C. § 227 ET SEQ.**

33. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
34. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.
35. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
36. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.**

37. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
38. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

1 39. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
2 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in
3 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
4 227(b)(3)(C).

5 40. Plaintiff and the Class are also entitled to and seek injunctive relief
6 prohibiting such conduct in the future.

7 **PRAYER FOR RELIEF**

8 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The
9 Class members the following relief against Defendant:

10 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE
11 TCPA, 47 U.S.C. § 227 ET SEQ.**

12 41. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),
13 Plaintiff seeks for himself and each Class member \$500.00 in statutory
14 damages, for each and every violation, pursuant to 47 U.S.C. §
15 227(b)(3)(B).

16 42. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
17 conduct in the future.

18 43. Any other relief the Court may deem just and proper.

19 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL
20 VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

21 44. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
22 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00 in
23 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
24 227(b)(3)(C).

25 45. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
26 conduct in the future.

27 46. Any other relief the Court may deem just and proper.

TRIAL BY JURY

47. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Respectfully submitted this 14th day of August, 2015.

By: /s/ Todd M. Friedman
Todd M. Friedman
Attorney for Plaintiff